



**STATEMENT OF  
ZACHARY HEARN, DEPUTY DIRECTOR FOR CLAIMS  
VETERANS AFFAIRS AND REHABILITATION DIVISION  
THE AMERICAN LEGION**

**BEFORE THE**

**COMMITTEE ON VETERANS' AFFAIRS  
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS  
UNITED STATES HOUSE OF REPRESENTATIVES**

**ON**

**"BEYOND TRANSFORMATION: REVIEWING CURRENT STATUS AND  
SECONDARY EFFECTS OF VBA TECHNOLOGY"**

**FEBRUARY 5, 2014**

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The Department of Veterans Affairs (VA) is in the midst of a massive transformation of the manner in which they do business, the business of processing disabled veterans' claims for benefits. In an attempt to move beyond the legacy system of paper files that threatened the physical integrity of their own buildings under the massive weight of backlogged disability claims<sup>1</sup>, VA has promised an electronic operating environment, the Veterans Benefits Management System (VBMS) that will move the agency into the 21<sup>st</sup> century and eliminate many problems that have caused the current backlog of claims.

While The American Legion has long maintained no electronic system can be a complete panacea for the myriad problems that plague the disability claims system, VBMS will offer some improvements and does offer opportunities to help alleviate some problems that contribute to lengthy delays for disabled veterans. However, the change to the new system also presents new concerns, new challenges, and without careful consideration of the impact of these changes, veterans could be negatively affected by the changes. The most important consideration moving forward is that VA *must* include veterans as stakeholders in the decision making process about how to proceed into this brave new world of electronic claims processing. Nobody is better placed to see the impact on veterans than Veterans Service Organizations (VSOs) such as The American Legion, who provides accreditation to over 2,900 service officers across the nation to serve the needs of veterans navigating the complex disability claims process. Our American Legion service officers have already helped nearly 11,000 veterans file new claims this fiscal year, and are proud to serve and represent over 720,000 veterans nationwide.

It goes without saying that any changes to the process need to focus, not on what makes things *easier* for VA, but on what makes the process best able to serve *veterans*. After all, the entire purpose of the VA is to serve those who have borne the battle for this nation, and their surviving spouses and orphans.

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<sup>1</sup> VA Office of the Inspector General (VAOIG) Report 12-00244-241 "*Claims Folder Storage at the VA Regional Office, Winston-Salem, North Carolina*" August 9, 2012

While there are many areas potentially affected by the changes to the new electronic system, The American Legion would like to focus on three areas for the purposes of this testimony. The American Legion is concerned about recent attempts by VA to force veterans into options which may not be in their best interest; about how a move to divide work hinted at in testimony from VA may impact the claims process; and how splitting claims and opening up the processing to a cloud network may negatively impact the ability to communicate between VA and the VSOs who represent veterans, to the detriment of those veterans' claims.

### **Veterans Losing the Ability to Choose**

Recently, in the Federal Register, VA promulgated a proposed rule change<sup>2</sup> which, though potentially innocuous on the surface, could negatively impact veterans. The change, insisting that all initial claims *must* be filed on a specific VA form, effectively eliminates the current “informal claim” which has been important for protecting the effective dates of veterans' claims.

Through the elimination of the traditional informal claim, VA eliminates the opportunity to create an effective date at the point where the veteran opts to pursue a disability claim. Our understanding of the proposed regulation affects only the veterans seeking disability compensation through non-electronic means. If a veteran applies for disability compensation through electronic means through the submission of an “incomplete application”, VA will establish an effective date at the time of the incomplete application submission as long as the veteran submits a complete application within one year.

Through adoption of these changes, VA will essentially create a division between veterans with internet access and those without internet access. According to the National Center for Veterans Analysis and Statistics, the average age of male veterans was 64 years old in 2011<sup>3</sup>; the United States Census Bureau reported that only 45.5 percent of Americans (veteran and non-veteran) age 65 and older have access to the internet from any location<sup>4</sup>. Assuming these statistics are similar in the veteran community as the non-veteran community regarding internet accessibility, VA could be potentially eliminating for millions of veterans an appropriate effective date simply by virtue of whether the veteran has access to the internet.

Beyond the issue surrounding informal claims is the status of inferred claims. The proposed regulation suggests that the veteran would no longer be permitted to receive a grant for service connection based upon an inferred claim as the veteran never filed for the claim. Frequently, a veteran may have secondary or aggravated conditions by a service connected condition the veteran is seeking. If the veteran receives the appropriate nexus statement supporting this relationship either from a VA medical professional or an outside medical professional, the veteran under current regulations is entitled to receive these benefits; however under this proposal, this would not occur.

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<sup>2</sup> “RIN 2900-AO81—Standard Claims and Appeals Forms” - 78 Fed. Reg. 65,490 (October 31, 2013)

<sup>3</sup> [http://www.va.gov/vetdata/docs/SpecialReports/Profile\\_of\\_Veterans\\_2011.pdf](http://www.va.gov/vetdata/docs/SpecialReports/Profile_of_Veterans_2011.pdf)

<sup>4</sup> <http://www.census.gov/prod/2013pubs/p20-569.pdf>

Ultimately, The American Legion is concerned VA is sacrificing veterans' choices and options in the interest of making the claims system easier for VA to work with. However, the disability claims system does not exist to serve VA; it exists to serve the veterans disabled through service to their country.

While it may be beneficial, both for veterans and the VA, to have veterans submit claims in a certain fashion, such as through the Fully Developed Claims (FDC) process or through the eBenefits portal, not every veteran is going to find that choice in their best interest or find that choice to be the one that meets their particular set of needs. There are better ways to approach channeling veterans towards the proper path for receiving benefits. Legislation such as the "Veterans Benefits Claims Faster Filing Act" (HR 1809/S 1148) provides information to veterans and allows them to make the choice that best suits their needs. Through this information, many veterans will see the benefits of applying through the FDC program, or of filing electronically. Veterans will still be encouraged and channeled towards the better options, but only if that's the option that works best *for that veteran*. We cannot take away veterans' rights to choose the options for their claims that best suit their needs.

### **Splitting The Issues**

In his testimony before this committee on December 4, 2013, VA's Director of Compensation Service Tom Murphy edged toward the notion in his responses to questioning that VA may soon be able to split multi-issue claims and send the individual issues to those best able to process that medical concern. This sort of proposal, seemingly simple at the outset, has potential ripple effects both good and for ill.

In his testimony, Director Murphy notes VA's concern about the rising complexity of VA claims. According to Murphy the average VA claim now contains 7.2 medical issues for consideration<sup>5</sup>. In conversations with claims raters, many American Legion Department Service Officers (DSOs) report they are told VA employees are expected to process five claims per day to meet their work product goals. Even simple math means a VA employee is expected to read, analyze and apply all existing rules and regulations to 36 distinct medical issues in a single day, or 180 medical issues per week. Clearly, it's worth looking at how work credit is counted if this is the workload raters are expected to accomplish.

However, the solution cannot be as simple as merely splitting the issues off into individual chunks and distributing the work amongst many. In addition to the more traditionally understood method of service connection for a disability – that the injury or disease had its onset during the veteran's period of active service – veterans are also entitled to service connection for a disability "...which is proximately due to or the result of a service-connected disease or injury."<sup>6</sup> If a veteran's multi-issue claims are to be split up, with the individual issues farmed out to multiple VA employees, there must be a mechanism in place that will still look at the whole picture of the veteran and determine the possibility of secondary service connection. Exactly what this means or how it could be best implemented still requires consideration.

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<sup>5</sup> Witness Testimony of Mr. Tom Murphy, Director, Compensation Service, Veterans Benefits Administration, U.S. Department of Veterans Affairs – December 4, 2013

<sup>6</sup> 38 CFR § 3.310(a)

It may be as simple as providing each overall claim with an overseer to ensure the entirety of the veteran's claim remains in focus. It may be more complicated, such as issuing instructions to the physicians who examine the veterans and provide opinions, as well as the raters who render the final determination along the lines of:

*This veteran is being evaluated for service connection for [X] condition. Service connection is allowed through direct linkage to an event or disease occurring during active duty service and/or through secondary service connection, wherein the current disability is caused or aggravated by a service connected condition. The veteran is ALSO being evaluated for service connection for [Y] and [Z] conditions, in your opinion/decision, please address whether those conditions, individually or in concert, are as likely as not contributory to the cause or aggravation of [X] condition.*

In essence, such a divided process would likely need to expand the reliance on hypothetical consideration within the claims system. Whether this would be effective or not, or whether it would ultimately be in the best interest of veterans will require a good deal of further discussion. Suffice to say, while there may be some benefit to ensuring that VA's 100 best evaluators of mental health disorders work on the lion's share of mental health claims, the implementation of such a plan is unlikely to be a simple or smooth transition process. There are going to be many questions raised, and the needs of veterans must be considered at every step along the way. The VSOs *must* be included in VA and congressional decision making along this road.

### **Processing In The Cloud**

One of the other concerns raised by VBMS's ability to split claims into individual issues and redirect them throughout the entire cloud of the nationwide system is the breakdown in communication between VA employees and the VSOs that represent veterans, as well as the communication factor for veterans themselves. Past VA experiments in moving claims out of the Regional Offices (ROs) in which they are filed have caused problems.

In 2008 and 2009 respectively, VA's Pension Management Centers (PMCs) took on the additional task of processing responsibilities for death pension applications and Dependency and Indemnity Compensation (DIC) claims<sup>7</sup>. In addition to the problems caused increasing the backlog on these death pension and DIC claims because the PMCs were not equipped to adequately process the volume directed to them<sup>8</sup>, The American Legion Department Service Officers (DSOs) reported an even greater problem. Whereas when these claims were still located in the ROs, the DSOs were able to communicate regularly with the VA staff processing the claims and ease the process along for the widows and widowers, in the PMCs communication was next to impossible. When the delays started piling up, DSOs, working on behalf of the recently widowed surviving spouses, some of the most vulnerable clients, couldn't even get basic information about the claims.

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<sup>7</sup> VAOIG Report 10-00639-135 "Veterans Benefits Administration Review of Pension Management Centers" March 30, 2011

<sup>8</sup> VAOIG Report 10-00639-135 "Veterans Benefits Administration Review of Pension Management Centers" March 30, 2011

In a successful RO, the relationship between the VA staff and the VSOs working for veterans in that office is one of open communication. Often, the *people* involved can talk together and solve a lot of problems quickly and without extra bureaucratic red tape. When *people* work together as *partners* it is a lot easier to get things done, to the benefit of veterans. It's a mutually beneficial relationship.

An American Legion DSO can spot a situation where a veteran's claim was denied because VA failed to consider important evidence and raise that issue with the rater and coach before the decision is promulgated. Often times VA and the VSOs agree and can save a lot of time for the veterans, who otherwise would have to submit to a lengthy appeals process that can add years, not months to the total claim time. Furthermore, this helps keep claims off of VA's active inventory if the situation can be resolved reasonably. Similarly, sometimes a VA employee working on rating a claim will notice a veteran, despite being prompted by a letter, has failed to submit critical evidence. Many employees will pick up the phone, or jog down a flight of stairs or two to find the veteran's service officer and see if they can rapidly acquire the evidence and help move the process along. They can speak to each other in short hand because they both know exactly what's needed in the complicated claims system. It helps the VSOs and it helps VA, but most importantly, *it helps the veterans get timely, accurate decisions.*

What The American Legion found in the consolidation of death pension and DIC claims to the PMCs was that this easy communication was shut down. Even though VA intended to help the claims process by consolidating, when they ran into trouble, the communication with the key partner – the VSOs – was hindered by geography and lack of infrastructure to address this vital back and forth between rater and DSO.

The American Legion believes this would not happen if VSOs were a vital part of the planning stages of any consolidation or workflow change plans<sup>9</sup>. Currently, the VSOs are not as included in that process as we would like them to be. Before VA lunges forward with another scheme to alter the manner in which they process claims, it would behoove them to ensure they have on board all the partners who could help them to be successful and fully supportive.

On behalf of National Commander Dan Dellinger and our 2.4 million members, The American Legion would like to thank the Committee for their consideration of the many ramifications of VA's electronic transformation. The American Legion looks forward to working with the Committee, as well as VA, to ensure the new electronic system is effectively implemented to fulfill the most important goal: getting veterans the benefits they deserve in a timely manner. For additional information regarding this testimony, please contact Mr. Ian de Planque at The American Legion's Legislative Division, (202) 861-2700 or [ideplanque@legion.org](mailto:ideplanque@legion.org).

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<sup>9</sup>American Legion Resolution No. 25: "*The American Legion Policy on Department of Veterans Affairs (VA) Consolidation Efforts*" – MAY 2009